

**IT IS THE VENDOR'S RESPONSIBILITY TO CHECK
FOR ADDENDUMS PRIOR TO SUBMITTING PROPOSALS**

NOTICE TO BIDDERS SPECIFICATION NO. 05-099

The City of Lincoln, Nebraska intends to purchase and invites you to submit a sealed bid for:

Annual Requirements for Truck Tanker Transport of Liquid Municipal Sludge

Sealed bids will be received by the City of Lincoln, Nebraska on or before 12:00 noon Wednesday, April 20, 2005 in the office of the Purchasing Agent, Suite 200, K Street Complex, Southwest Wing, 440 South 8th Street, Lincoln, Nebraska 68508. Bids will be publicly opened and read at the K Street Complex. **Bids may be downloaded from the City's website : www.lincoln.ne.gov (Keyword: bid)** **Prospective Bidders must monitor the bid listing on website for any addendums.**

A non-mandatory pre-bid conference is scheduled for April 13, 2005, at 2pm in the Conference room, Divisional office building of the Lincoln Wastewater system at 2400 Theresa Street, Lincoln NE.

Bidders should take caution if U.S. mail or mail delivery services are used for the submission of bids. Mailing should be made in sufficient time for bids to arrive in the Purchasing Division, prior to the time and date specified above. **Fax or e-mail bids are not acceptable. Bid response must be in a sealed envelope with the company name and Specification number noted on the outside.**

Specification 05-099
for
Hauling Services
Truck Tanker Transport of Liquid Municipal Sludge
(Lincoln Wastewater System)

1. Scope

- 1.1 This specification covers the furnishing of contract hauling services, including tractor(s), tanker trailer(s), and driver(s), to transport liquid municipal sludge from the Northeast Treatment Plant Sludge Injection Facility to the Theresa Street Wastewater Treatment Plant.
- 1.2 Please refer to the attachment (map) for the location of the facilities and anticipated hauling route.

2. General

- 2.1 The hauler shall furnish the tractor-trailer tanker(s) and driver(s) to transport a minimum of two million gallons of liquid municipal sludge from the Northeast Wastewater Treatment Facility Sludge Injection Site located near 70th Street, between McElvie Road and Bluff Road, to the Theresa Street sludge holding tank located at 2400 Theresa Street.
- 2.2 Depending upon the cost, speed, and success of the project, the City may elect to extend the contract to include additional hauling quantities in increments of two million gallons during the hauling period.
- 2.3 The contract hauling period will start April 31, 2005 end on March 30, 2006.
- 2.4 The contract hauler shall comply with all Federal, State, and Municipal transportation regulations.
- 2.5 The round-trip haul distance is approximately 15 miles
- 2.6 The City of Lincoln reserves the right to temporarily suspend haul operations in the event of equipment break-down or other complications which hinder the processing and transporting of the bio-solids.

3. **Performance Requirements**

- 3.1 Tank trailer capacity shall be no less than 4,000 gallons.
- 3.2 The tank trailer shall have an on-board pump capable of pumping and discharging the tank contents to the Theresa Street sludge holding tank.
- 3.3 The on-board tanker pump shall be capable of pumping no less than 200 g.p.m. at a total discharge head of 45 feet.
- 3.4 The hauler shall provide flexible hose and connectors to empty tank trailer contents from the designated discharge sites.
- 3.5 The City shall provide fill hose, fitting, pump equipment, and staff for loading tank trailers.
 - 3.5.1 It is the intent to fill/load the tank trailers from an open hatch or fitting at the top of each tank trailer at a pumping rate of 500 to 800 g.p.m.
- 3.6 The hauler may transport/haul between the hours of 6:00 a.m. to 8:00 p.m., a maximum of six days per week.
- 3.7 The hauler must be capable of transporting a minimum of 70,000 gallons during the daily haul period.

4. **Sludge Characteristics**

- 4.1 The sewage treatment biosolids material is a liquid waste material that will have a solids content of two to four percent.
- 4.2 The specific gravity will range from 1.0-1.05.
- 4.3 The hauler should wear protective clothing and gloves when loading and unloading material.
- 4.4 The liquid biosolids material does contain bacteria and the hauler should exercise preventative measures to protect themselves from contamination through open cuts, splash, etc.

5. **Submittals**

- 5.1 Bidders shall provide the number and capacity of tanker-truck unit(s) which will be utilized under this contract on the bid proposal.
- 5.2 The rated capacity of the on-board pump used to off-load the sludge shall be provided for each tanker-truck unit.

6. **Method of Payment**

- 6.1 Payment will be made on a per gallon basis. The contractor will be required to keep an accurate log on the number of trips and total gallons transported.

7. **Pre-Bid Conference**

- 7.1 A non-mandatory pre-bid conference is scheduled for **April 13th, 2005 at 2:00 p.m.** in the Conference Room in the Divisional Office building of the Lincoln Wastewater System at 2400 Theresa Street, Lincoln, Nebraska.
- 7.2 Bidders are encouraged attend a pre-bid conference and visit both facilities to familiarize themselves with facility layouts, fitting requirements for hose connections, and peculiarities of the operations.
- 7.3 Bidders shall correlate their observations with the requirements of the project specifications and otherwise satisfy themselves of the expense and difficulties in executing the work.
- 7.4 Questions and clarifications regarding these specifications can be obtained by calling Mr. Steve Crisler, Facility Maintenance Coordinator, Lincoln Wastewater System, 402-441-7966.

BID PROPOSAL
SPECIFICATION NO. 05-099

The under signed bidder, having full knowledge of the requirements of the City of Lincoln for the below listed items and the contract documents (which includes Notice to Bidders, Instructions to Bidders, this Proposal, Specifications, Contract, and any and all addenda) and all other conditions of the proposal, agrees to sell to the City the below listed items for the performance of this specification, complete in every respect, in strict accordance with the contract documents at and for unit prices listed below.

ADDENDA RECEIPT: The receipt of addenda to the specifications numbers____through____are hereby acknowledged. Failure of any bidder to receive any addendum or interpretation of the specifications shall not relieve the bidder from any obligations specified in this request. All addenda shall become part of the final contract document.

Company Name _____

<u>DESCRIPTION</u>	<u>QUANTITY</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
Transport liquid biosolids from the Northeast Injection Facility to the Theresa Street Wastewater Treatment Facility	2,000,000 Gallons	\$_____/Gal.	\$_____

Number of Trucks to be Used: _____ Trucks

List Carrying Capacity of Each Tanker-Truck

1. _____ Gallons 2. _____ Gallons 3. _____ Gallons

BID SECURITY REQUIRED NO x

The undersigned signatory for the bidder represents and warrants that he has full and complete authority to submit this proposal to the City, and to enter into a contract if this proposal is accepted.

RETURN TWO (2) COPIES OF THE PROPOSAL AND SUPPORTING MATERIAL. MARK
OUTSIDE OF THE BID ENVELOPE: SEALED BID FOR SPECIFICATION 05-099

Company Name

By (Signature)

Street Address or PO Box

(Print Name)

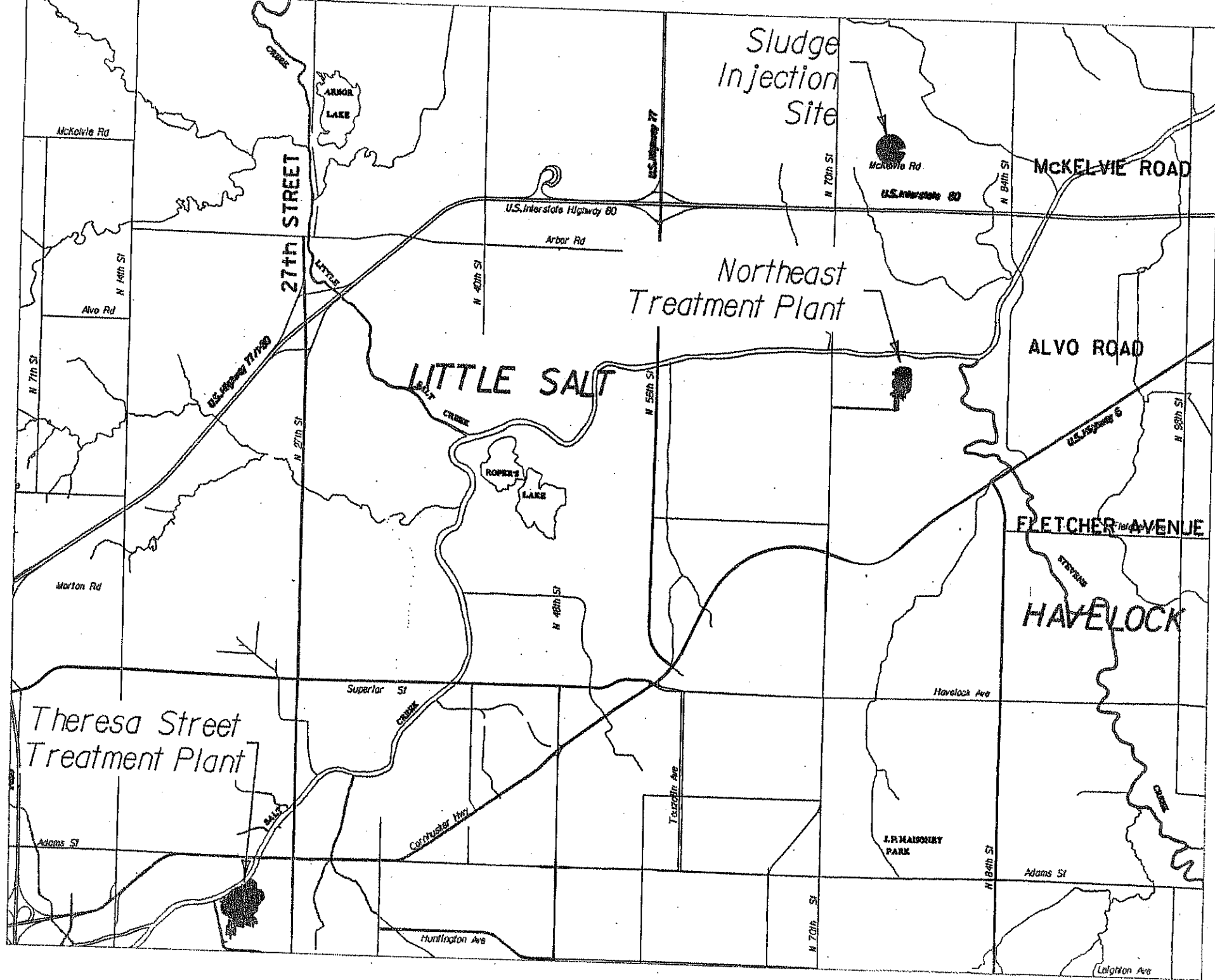
City, State, Zip Code

(Title)

Telephone/Fax

Date

Employer's Federal ID or Social Security No.



(DRAFT)

CONTRACT DOCUMENTS

CITY OF LINCOLN

NEBRASKA

**ANNUAL CONTRACT FOR ANNUAL REQUIREMENTS FOR TRUCK
TANKER TRANSPORT OF LIQUID MUNICIPAL SLUDGE
AS PER SPECIFICATION 05-099**

Contractor: (VENDOR)

EXAMPLE (DRAFT) CITY OF LINCOLN, NEBRASKA
CONTRACT AGREEMENT

THIS CONTRACT, made and entered into this ____ day of _____ 2005, by and between **VENDOR/COMANY NAME** hereinafter called contractor, and the City of Lincoln, Nebraska, a municipal corporation, hereinafter called the City.

WITNESS, that:

WHEREAS, the City has caused to be prepared, in accordance with law, Specifications, Plans, and other Contract Documents for the Work herein described, and has approved and adopted said documents and has caused to be published an advertisement for and in connection with said Work, to-wit: **Annual Requirements for Truck Tanker Transport of Liquid Municipal Sludge**

_____, and,

WHEREAS, the Contractor, in response to such advertisement, has submitted to the City, in the manner and at the time specified, a sealed Proposal in accordance with the terms of said advertisement; and,

WHEREAS, the City, in the manner prescribed by law has publicly opened, read aloud, examined, and canvassed the Proposals submitted in response to such advertisement, and as a result of such canvass has determined and declared the Contractor to be the lowest responsible bidder for the said Work for the sum or sums named in the Contractor's Proposal, a copy thereof being attached to and made a part of this Contract;

EQUAL EMPLOYMENT OPPORTUNITY: In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, ancestry, disability, age or marital status. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.

NOW, THEREFORE, in consideration of the sums to be paid to the Contractor and the agreements herein contained, the Contractor and the City have agreed and hereby agree as follows:

- 1 **General Description.** The Contractor agrees to (a) furnish all tools, equipment, supplies, superintendence, transportation, and other accessories, services, and facilities; (b) furnish all materials, supplies, and equipment specified to be incorporated into and form a permanent part of the complete work; (c) provide and perform all necessary labor in a substantial and workmanlike manner and in accordance with the provisions of the Contract Documents.
- 2 **Term of the Agreement.** Term of the Agreement shall be one year as twelve (12) consecutive months, and shall be **April 31, 2005** through **March 30, 2006**.
 - 2.1 At the City's request, with the Contractor's consent, the agreement shall be renewable for two (2) each additional one (1) year periods with any extensions as mutually agreed.
 - 2.2 The City shall notify the Contractor of any determination to extend this Agreement no less than thirty (30) days prior to the beginning of the relevant optional year.
- 3 **Governing Laws.** The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this agreement.

4. Confidentiality. If and to the extent, and so long as, required by the provisions enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, but not otherwise, Contractor does hereby assure the City that Contractor will appropriately safeguard protected any health information made available to or obtained by Contractor.
 - 4.1 In implementation of such assurance and without limiting the obligations of Contractor otherwise set forth in this Agreement or imposed by applicable law, Contractor hereby agrees to comply with applicable requirements of law relating to protected health information and with respect to any task or other activity Contractor performs on behalf of the City.
 - 4.2 At termination of this Agreement, Contractor shall return or destroy all protected health information received from City that Contractor still maintains in any form and retain no copies of such information.
 - 4.3 The Parties agree that this Agreement may be amended from time to time if and to the extent required by the provisions of 42 U.S.C. 1171 et seq. enacted by the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, in order to assure that this Agreement remains consistent therewith.
5. Quantity Requirements. The City reserves the right to modify the quantity ordered, and to purchase current technology at negotiated prices. Implementation will be in accordance to the time line as agreed with the Contractor.
6. Equal Employment Opportunity. In connection with the carrying out of this project, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age or marital status. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other compensation; and selection for training, including apprenticeship.
7. Compensation. The City shall pay for purchased services and equipment at the rates as set . Payment will be made, unless otherwise stated, within thirty (30) calendar days after acceptance and proper invoicing by the Contractor. No increase above said bid price will be allowed to the Contractor during the term of the contract unless and except as provided by the specifications.

8. Invoices. Contractor shall, within fifteen (15) working days following the last day of each calendar month in which services were provided, submit an invoice and request for payment on an invoice form acceptable to the City. The invoice shall itemize: 1) the hours of services or equipment rendered listed by classification, 2) the date such services were provided, 3) a general description of the services or equipment provided, 4) the name of client receiving services, 5) the amount and type of all reimbursable expenses being charged to the Contract, and 6) the dates of the performance period covered by the invoice.
9. Payment of Unauthorized Claims. The City may refuse to pay any claim that is not specifically authorized by this Contract. Payment of a claim shall not preclude the City from questioning the propriety of the claim. The City reserves the right to offset any overpayment or disallowance of claim by reducing future payments.
10. Termination. The Agreement may be terminated by the following:
 - 10.1 Termination for Convenience. The City reserves the right to terminate any part of or the entire contract that may result from this bid without cause and at any time provided the Contractor is given thirty (30) calendar days written notice. The Contractor may cancel said agreement upon ninety days written notice (to allow sufficient time for the City to secure another provider).
 - 10.2 Termination for Cause. The City may terminate the Contract if the Contractor:
 - 1) Refuses or fails to supply enough properly skilled workers or proper equipment to satisfactorily provide complete needs assessment as requested.
 - 2) Disregards laws, ordinances, or regulations or orders of a public authority having jurisdiction over the Contract.
 - 3) Otherwise commits a substantial breach of any provision of the Contract Document.
 - 10.3 Termination for insolvency of Contractor. Contractor shall be deemed to be insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition for bankruptcy has been filed, and whether or not insolvent within the meaning of the Federal Bankruptcy Law; the filing of a voluntary petition to have Contractor declared bankrupt; the appointment of a Receiver or Trustee for Contractor; or the execution by Contractor of a general assignment for the benefit of creditors
11. Payment Upon Early Termination. In the event this Contract is terminated before the completion of services, the City shall pay the Contractor for services provided in a satisfactory manner, a sum based upon the actual time/materials spent. In no case shall such payment exceed the total contract price.

- 12 Terms of Early Payment. The City and the Contractor shall have the following obligations upon termination:
- 12.1 The City must notify the Contractor in writing. Upon receipt of notice, the Contractor must cease all work and proceed to close out all operations.
 - 12.2 The Contractor must deliver all reports and estimates entirely or partially completed and all unused materials supplied by the City.
 - 12.3 The Contractor must appraise the work completed and submit the appraisal to the City for evaluation.
 - 12.4 The City will pay the Contractor a fee for the percentage of the work actually completed as payment in full for services rendered to the date of termination.
- 13 Insurance Requirements. Prior to commencement of any services, the Contractor shall provide the City with the requested insurance certificates. All required insurance policies, except Workers' Compensation and Professional Liability, must name the City as Additional Insured with regard to this project.
- 13.1 The Contractor must give the City thirty days written notice before cancelling any policy.
 - 13.2 The Contractor's failure to furnish evidence of insurance may be considered a breach of contract.
 - 13.3 The Contractor must require any subcontractors to provide Worker's Compensation and Employer's Liability with at least as much coverage as that provided by the Contractor.
- 14 Non-transferable Responsibilities. No assumption or takeover of any of Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than Contractor whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration, for any reason whatsoever, may occur without City's express prior written approval.
- 14.1 If any such assumption, takeover, or unauthorized performance does occur without such prior written approval, this Agreement will become void for failure of its essential purpose. Such act is therefore a material breach of this Agreement, upon which City may pursue any lawful remedy.
- 15 Assignment and Subcontracting. Contractor shall not assign its rights, delegate its duties or subcontract any performance of our Agreement without the express prior written consent of City. Any assignment, delegation or subcontract without such express prior written consent shall be null and void and shall constitute a material breach of this Agreement, upon which City may immediately terminate the Agreement in accordance with the termination provisions as stated in this contract.

- 16 Time Is of the Essence. Time is of the Essence. If any anticipated or actual delays arise, Contractor shall immediately notify City. Regardless of notice if deliveries are not made at the time agreed upon, City may, at its sole discretion, terminate this Agreement and proceed pursuant to termination provisions as stated in this contract.
- 17 Independent Contractor Status. This Agreement is by and between City and Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between City and Contractor. The employees and agents of one party are not the employees or agents of the other party for any purpose whatsoever.
- 17.1 Contractor understands and agrees that all persons performing work pursuant to this Agreement are, for purposes of worker's compensation liability, solely employees of Contractor and not employees of City. Contractor shall be solely liable and responsible for furnishing any and all workers' compensation benefits to any person as a result of any injuries arising from or connected with any work performed by or on behalf of Contractor hereunder.
- 17.1 The employees and agents of each party, shall while on the premises of the other party, comply with all rules and regulations of the premises, including, but not limited to, security and safety requirements.
- 18 Indemnification.
- 18.1 The Contractor shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss of use resulting therefrom; is caused in whole or part by any negligent act or omission of the proposer, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
- 18.2 In any and all claims against the City or any of its members, officers or employees by an employee of the proposer, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 14.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the proposer or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 19 Insurance, Licenses and Bonds.
19.1 The Contractor shall obtain whatever insurance, licenses and bonds and fulfill whatever other requirements as are required in order to perform this Agreement, and shall provide evidence of such insurance, licenses and bonds to the City.
- 20 Inclusion Of All Necessary Fees. The Contractor shall comply with all federal, state, and local laws together with all ordinances and regulations applicable to the services. The Contractor shall procure all licenses, permits, or other rights necessary for the fulfillment of its obligation under this agreement.
- 21 Proprietary Considerations and Data Security. Except for Contractor's work papers, the City and Contractor agree that all materials and information developed under this Agreement shall become the sole property of the City.
21.1 Any materials and information not developed under this Agreement, which Contractor considers to be proprietary and confidential, shall be plainly and prominently marked by Contractor as "Trade Secret," "Proprietary," or "Confidential."
21.2 City will use reasonable means to ensure that Contractor's confidential information is safeguarded and held in confidence. City agrees not to reproduce or distribute Contractor's proprietary material to non-Governmental agencies without prior written permission from Contractor. City's obligation pursuant to this Article shall not apply to any material, data or information not plainly and prominently marked with the restrictive legends as set forth in subsection 9.1, above.
- 22 Warranties. The Contractor, by entering into a contract with the City, warrants and represents that all materials, equipment, and service delivered to the City pursuant to the contract conforms to all of the specifications contained or referred to herein. The Contractor further guarantees to replace all materials, equipment, software, or service that may be rejected by the City due to defective materials or workmanship for a minimum of one year following final acceptance. Failure or neglect of the City to require compliance with any term or condition of the contract or specifications shall not be deemed a waiver of such term or condition.

- 23 Breach of Warranties. In the event of any breach of Contractor's warranties and/or covenants contained in this contract, or if, for any other reason, except only the fault of the City, the hardware, software or other services does not operate in accordance with the specifications provided in this contract and Contractor has not adjusted, or cannot adjust the same within fifteen (15) days after notice to Contractor, City shall have the right, at its option, to cancel this contract and to receive the return of all sums theretofore paid by City to Contractor for all non-consumable items and/or services, in addition to such other damages to which the City may be legally entitled. The Contractor's obligations under this agreement are in lieu of all other warranties expressed or implied.
- 24 Non-exclusiveness of Remedies. Any right or remedy on behalf of the City provided for in any part of these specifications, including, but not limited to, any guaranty or warranty or any remedy for Contractor's nonperformance, shall be in addition to and not a limitation of any right or remedy otherwise available by law, equity, or statute.
- 25 Notices. All notices or demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt, or when mailed by first class registered or certified mail, postage prepaid, addressed to the City and Contractor at their respective addresses designated below, or at such other address as the City or Contractor, as the case may be, shall have furnished in writing to the other.

These Contract Agreements, together with the other Contract Documents herein above mentioned, form this Contract, and the are as fully a part of the Contract as if hereto attached or herein repeated.

The Contractor and the City hereby agree that all the terms and conditions of this Contract shall by these presents be binding upon themselves, and their heirs, administrators, executors, legal and personal representatives, successors, and assigns.

IN WITNESS WHEREOF, the Contractor and the City do hereby execute this contract.

EXECUTION BY THE CITY OF LINCOLN, NEBRASKA

ATTEST:

CITY OF LINCOLN, NEBRASKA

City Clerk

Mayor

Approved by Executive or No. _____ dated

EXECUTION BY CONTRACTOR

IF A CORPORATION:

Name of Corporation

(Address)

ATTEST:

Secretary (SEAL)

By: _____
Duly Authorized Official

Legal Title of Official

IF OTHER TYPE OF ORGANIZATION:

To be filled in after bid recommendation

Name of Organization

Type of Organization

(Address)
By: _____
Member

By: _____
Member

IF AN INDIVIDUAL:

Name

Address

Signature

PLUS CITY'S INSURANCE REQUIREMENTS and TAX EXEMPT FORMS

INSTRUCTIONS TO BIDDERS

CITY OF LINCOLN, NEBRASKA PURCHASING DIVISION

1. BIDDING PROCEDURE

- 1.1 Bidder shall submit two (2) complete sets of the bid documents and all supporting material. All appropriate blanks shall be completed. Any interlineation, alteration or erasure on the specification document shall be initialed by the signer of the bid. Bidder shall not change the proposal form nor make additional stipulations on the specification document. Any amplified or qualifying information shall be on the bidder's letterhead and firmly attached to the specification document.
- 1.2 Bid prices shall be submitted on the Proposal Form included in the bid document.
- 1.3 Bidders may submit a bid on an "all or none" or "lump sum" basis, but should also submit a quotation on an item-by-item basis. Bidding documents shall be clearly marked indicating the kind of proposal being submitted.
- 1.4 Each bid must be legibly printed in ink or by typewriter, include the full name, business address, and telephone number of the bidder; and be signed in ink by the bidder.
- 1.5 A bid by a firm or organization other than a corporation must include the name and address of each member.
- 1.6 A bid by a corporation must be signed in the name of such corporation by a duly authorized official thereof.
- 1.7 Any person signing a bid for a firm, corporation, or other organization must show evidence of his authority so to bind such firm, corporation, or organization.
- 1.8 Bids received after the time and date established for receiving bids will be rejected.

2. BIDDER'S SECURITY

- 2.1 Bid security, as a guarantee of good faith, in the form of a certified check, cashier's check, or bidder's bond, may be required to be submitted with this bid document, as indicated of the Proposal Form.
- 2.2 If alternate bids are submitted, only one bid security will be required, provided the bid security is based on the amount of the highest gross bid.
- 2.3 Such bid security will be returned to the unsuccessful bidders when the award of bid is made.
- 2.4 Bid security will be returned to the successful bidder(s) as follows:
 - 2.4.1 For single order bids with specified quantities: upon the delivery of all equipment or merchandise, and upon final acceptance by the City.
 - 2.4.2 For all other contracts: upon approval by the City of the executed contract and bonds.
- 2.5 City shall have the right to retain the bid security of bidders to whom an award is being considered until either:
 - 2.5.1 A contract has been executed and bonds have been furnished.
 - 2.5.2 The specified time has elapsed so that the bids may be withdrawn.
 - 2.5.3 All bids have been rejected.

- 2.6 Bid security will be forfeited to the City as full liquidated damages, but not as a penalty, for any of the following reasons, as pertains to this specification document:

- 2.6.1 If the bidder fails to deliver the equipment or merchandise in full compliance with the accepted proposal and specifications.
- 2.6.2 If the bidder fails or refuses to enter into a contract on forms provided by the City, and/or if the bidder fails to provide sufficient bonds or insurance within the time period as established in this specification document.

3. EQUAL OPPORTUNITY

- 3.1 Each bidder agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status. Bidder shall fully comply with the provisions of Chapter 11.08 of the Lincoln Municipal Code.
- 3.2 Successful bidder will be required to comply with the provisions of the City's Affirmative Action Policy (Contract Compliance, Sec. 1.16).
- 3.3 The Equal Opportunity Officer will determine compliance or non-compliance with the City's Affirmative Action Policy upon a complete and substantial review of successful bidder's equal opportunity policies, procedures and practices.

4. DATA PRIVACY

- 4.1 Bidder agrees to abide by all applicable State and Federal laws and regulations concerning the handling and disclosure of private and confidential information concerning individuals and corporations as to inventions, copyrights, patents and patent rights.
- 4.2 The bidder agrees to hold the City harmless from any claims resulting from the bidder's unlawful disclosure or use of private or confidential information.

5. BIDDER'S REPRESENTATION

- 5.1 Each bidder by signing and submitting a bid, represents that the bidder has read and understands the specification documents, and the bid has been made in accordance therewith.
- 5.2 Each bidder for services further represents that the bidder is familiar with the local conditions under which the work is to be done and has correlated the observations with the requirements of the bid documents.

6. INDEPENDENT PRICE DETERMINATION

- 6.1 By signing and submitting this bid, the bidder certifies that the prices in this bid have been arrived at independently, without consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder prior to bid opening directly or indirectly to any other bidder or to any competitor; no attempt has been made, or will be made, by the bidder to induce any person or firm to submit, or not to submit, a bid for the purpose of restricting competition.

7. CLARIFICATION OF SPECIFICATION DOCUMENTS

- 7.1 Bidders shall promptly notify the Purchasing Agent of any ambiguity, inconsistency or error which they may discover upon examination of the specification documents.
- 7.2 Bidders desiring clarification or interpretation of the specification documents shall make a written request which must reach the Purchasing Agent at least seven (7) calendar days prior to the date and time for receipt of bids.
- 7.3 Interpretations, corrections and changes made to the specification documents will be made by written addenda.
- 7.4 Oral interpretations or changes to the Specification Documents made in any other manner, will not be binding on the City; and bidders shall not rely upon such interpretations or changes.

8. ADDENDA

- 8.1 Addenda are written instruments issued by the City prior to the date for receipt of bids which modify or interpret the specification document by addition, deletion, clarification or correction.
- 8.2 Addenda will be mailed or delivered to all who are known by the City to have received a complete set of specification documents.
- 8.3 Copies of addenda will be made available for inspection at the office of the Purchasing Agent.
- 8.4 No addendum will be issued later than forty-eight (48) hours prior to the date and time for receipt of bids, except an addendum withdrawing the invitation to bid, or an addendum which includes postponement of the bid.
- 8.5 Bidders shall ascertain prior to submitting their bid that they have received all addenda issued, and they shall acknowledge receipt of addenda on the proposal form.

9. ANTI-LOBBYING PROVISION

- 9.1 During the period between the bid close date and the contract award, bidders, including their agents and representatives, shall not directly discuss or promote their bid with any member of the City Council or City Staff except in the course of City-sponsored inquiries, briefings, interviews, or presentations, unless requested by the City.

10. BRAND NAMES

- 10.1 Wherever in the specifications or proposal form brand names, manufacturer, trade name, or catalog numbers are specified, it is for the purpose of establishing a grade or quality of material only; and the term "or equal" is deemed to follow.
- 10.2 It is the bidder's responsibility to identify any alternate items offered in the bid, and prove to the satisfaction of the City that said item is equal to, or better than, the product specified.
- 10.3 Bids for alternate items shall be stated in the appropriate brand on the proposal form, or if the proposal form does not contain blanks for alternates, bidder MUST attach to the specification documents on Company letterhead a statement identifying the manufacturer and brand name of each proposed alternate, plus a complete description of the alternate items including illustrations, performance test data and any other information necessary for an evaluation. The bidder must indicate any variances by item number

from the specification document no matter how slight. Bidder must fully explain the variances from the specification document, since brochure information may not be sufficient.

- 10.4 If variations are not stated in the proposal, it will be assumed that the item being bid fully complies with the City's specifications.

11. DEMONSTRATIONS/SAMPLES

- 11.1 Bidders shall demonstrate the exact item(s) proposed within seven (7) calendar days from receipt of such request from the City.
- 11.2 Such demonstration can be at the City delivery location or a surrounding community.
- 11.3 If bidder does not have an item in the area, it will be at the bidder's expense to send appropriate City personnel to the nearest location to view and inspect proposed item(s).
- 11.4 If items are small and malleable, and the bidder is proposing an alternate product, the bidder MUST supply a sample of the exact item. Samples will be returned at bidder's expense after receipt by the City of acceptable goods. Bidders must indicate how samples are to be returned.

12. DELIVERY

- 12.1 Each bidder shall state on his proposal form the date upon which he can make delivery of all equipment or merchandise. Time required for delivery is hereby made an essential element of the bid.
- 12.2 The City reserves the right to cancel orders, or any part thereof, without obligation, if delivery is not made within the time(s) specified on the proposal form.
- 12.3 All bids shall be based upon **inside** delivery of the equipment or merchandise F.O.B. the City at the location specified by the City, with all transportation charges paid.

13. WARRANTIES, GUARANTEES AND MAINTENANCE

- 13.1 Copies of the following documents must accompany the bid proposal for all items being bid:
 - 13.1.1 Manufacturer's warranties and/or guarantees.
 - 13.1.2 Bidder's maintenance policies and associated costs.
- 13.2 As a minimum requirement of the City, the bidder will guarantee in writing that any defective components discovered within a one (1) year period after the date of acceptance shall be replaced at no expense to the City. Replacement parts of defective components shall be shipped at no cost to the City. Shipping costs for defective parts required to be returned to the bidder shall be paid by the bidder.
- 13.3 Bidder Warrants and represents to the City that all software/firmware/hardware/equipment /systems developed, distributed, installed or programmed by Bidder pursuant to this Specification and Agreement.
 - 13.3.1 That all date recognition and processing by the software/firmware/hardware/equipment/system will include the four-digit-year format and will correctly recognize and process the date of February 29, and any related data, during Leap years; and
 - 13.3.2 That all date sorting by the software /firmware/hardware/ equipment/system that includes a "year category" shall be done based on the four-digit-year format. Upon being notified in writing by the City of the failure of any software/ firmware/

hardware /equipment /systems to comply with this Specification and Agreement, Contractor will, within 60 days and at no cost to the City, replace or correct the non-complying software/ firmware/ hardware/ equipment/ systems with software/firmware/ hardware/equipment/ systems that does comply with this Specification and Agreement.

- 13.3.3 No Disclaimers: The warranties and representations set forth in this section 13.3 shall not be subject to any disclaimer or exclusion of warranties or to any limitations of Licensor's liability under this Specification and Agreement.

14. ACCEPTANCE OF MATERIAL

- 14.1 All components used in the manufacture or construction of materials, supplies and equipment, and all finished materials, shall be new, the latest make/model, of the best quality, and the highest grade workmanship.
- 14.2 Material delivered under this proposal shall remain the property of the bidder until:
- 14.2.1 A physical inspection and actual usage of this material is made and found to be acceptable to the City; and
- 14.2.2 Material is determined to be in full compliance with the specifications and accepted proposal.
- 14.3 In the event the delivered material is found to be defective or does not conform to the specification documents and accepted proposal, then the City reserves the right to cancel the order upon written notice to the bidder and return materials to the bidder at bidder's expense.
- 14.4 Successful bidder shall be required to furnish title to the material, free and clear of all liens and encumbrances, issued in the name of the City of Lincoln, Nebraska, as required by the specification documents or purchase orders.
- 14.5 Selling dealer's advertising decals, stickers or other signs shall not be affixed to equipment. Vehicle mud flaps shall be installed blank side out with no advertisements. Manufacturer's standard production forgings, stampings, nameplates and logos are acceptable.

15. BID EVALUATION AND AWARD

- 15.1 The signed bid proposal shall be considered an offer on the part of the bidder. Such offer shall be deemed accepted upon issuance by the City of purchase orders, contract award notifications, or other contract documents appropriate to the work.
- 15.2 No bid shall be modified or withdrawn for a period of ninety (90) calendar days after the time and date established for receiving bids, and each bidder so agrees in submitting the bid.
- 15.3 In case of a discrepancy between the unit prices and their extensions, the unit prices shall govern.
- 15.4 The bid will be awarded to the lowest responsive, responsible bidder whose proposal will be most advantageous to the City, and as the City deems will best serve their requirements.
- 15.5 The City reserves the right to accept or reject any or all bids; to request rebids; to award bids item-by-item, by groups, or "lump sum"; to waive irregularities and technicalities in bids; such as shall best serve the requirements and interests of the City.

16. INDEMNIFICATION

- 16.1 The bidder shall indemnify and hold harmless the City, its members, its officers and employees from and against all claims, damages, losses, and expenses, including, but not limited to attorney's fees arising out of or resulting from the performance of the contract, provided that any such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property other than goods, materials and equipment furnished under this contract) including the loss or use resulting therefrom; is caused in whole or part by any negligent act or omission of the bidder, any subcontractor, or anyone directly or indirectly employed by any one of them or anyone for whose acts made by any of them may be liable, regardless of whether or not it is caused by a party indemnified hereunder.
- 16.2 In any and all claims against the City or any of its members, officers or employees by an employee of the bidder, any subcontractor, anyone directly or indirectly employed by any of them or by anyone for whose acts made by any of them may be liable, the indemnification obligation under paragraph 16.1 shall not be limited in any way by any limitation of the amount or type of damages, compensation or benefits payable by or for the bidder or any subcontractor under worker's or workmen's compensation acts, disability benefit acts or other employee benefit acts.

17. TERMS OF PAYMENT

- 17.1 Unless other specification provisions state otherwise, payment in full will be made by the City within thirty (30) calendar days after all labor has been performed and all equipment or other merchandise has been delivered, and all such labor and equipment and other materials have met all contract specifications.

18. LAWS

- 18.1 The Laws of the State of Nebraska shall govern the rights, obligations, and remedies of the Parties under this proposal and any agreement reached as a result of this process.

19. AFFIRMATIVE ACTION

- 19.1 The City of Lincoln-Lancaster County Purchasing Division provides equal opportunity for all bidders and encourages minority businesses and women's business enterprises to participate in our bidding process.

20. LIVING WAGE

- 20.1 The bidders agree to pay all employees employed in the performance of this contract, a base wage of not less than the City Living Wage per section 2.81.010 of the Lincoln Municipal Code. This wage is subject to change up or down every July.

SPECIAL PROVISIONS FOR COMMODITY TERM CONTRACTS

CITY OF LINCOLN, NEBRASKA PURCHASING DIVISION

1. ESTIMATED QUANTITIES

- 1.1 The quantities set forth in the specification document are approximate and represent the estimated requirements of the City for the contract period.
- 1.2 Items listed may or may not be inclusive of City requirements for this category.
- 1.3 Category items not listed, but distributed by bidder are to be referred to as kindred items. Kindred items shall receive the same percentage of discount or pricing structure as items listed in the specification document.
- 1.4 The unit prices and the extended total prices shall be used only as a basis for the evaluation of bids. The actual quantity of materials necessary may be more or less than the estimates listed in the specification document, but the City shall be neither obligated nor limited to any specified amount. The City will, if possible, restrict increases/decreases to 20% of the estimated quantities listed in the specification document.

2. CONTRACT PERIOD

- 2.1 The material shall be delivered as ordered during the contract period, beginning from the date of contract and ending one (1) year from that date, or as otherwise indicated on the proposal form.
- 2.2 The City is interested in a one (1) year contract, with the option to renew for additional one (1) year periods, not to exceed three (3) such renewals. Bidder must indicate on the proposal form if extension renewals are an option. By mutual consent of both parties it is understood and agreed that the contract may be renewed only at the same prices and/or under the same conditions governing the original contract; and any request for an increase in price or a change in the contract conditions shall be interpreted as a request not to renew the contract at the end of the current contract period.

3. BID PRICES

- 3.1 Bidders must state on the proposal form if the bid prices will remain firm for the full contract period; or if the bid prices will be subject to escalation/de-escalation.
- 3.2 Escalation/De-escalation Clause: In the event that prevailing market conditions warrant an adjustment in bid prices contained in the contract, the following escalation/de-escalation clause shall be the only clause applicable or acceptable to the City:
 1. Contractor shall give written notice to the Purchasing Agent of any proposed changes from contract prices not less than thirty (30) calendar days prior to the effective date of said price changes.
 2. Such notice must be accompanied by a certified copy of the supplier's advisory or notification to the contractor of price changes.
 3. No price escalation will be authorized in excess of the amount of the increase referred to on the supplier's notice.
 4. The approved price change shall be honored for all orders received by the contractor after the effective date of such price change.

5. Approved price changes are not applicable to orders already issued and in process at time of price change.
6. The City reserves the right to audit and/or examine any pertinent books, documents, papers, records or invoices relating directly to the contract transaction in question after reasonable notice and during normal business hours.
7. The Purchasing Agent retains the right to determine whether or not such proposed price changes are in the best interests of the City.
8. If in the opinion of the Purchasing Agent any proposed increase is found unacceptable, the Purchasing Agent reserves the right to cancel the contract upon thirty (30) calendar days written notice.
9. Contractors must tie any price change clause to an industry-wide or otherwise nationally recognized index, or some other form of verifiable document. Contractor will put the Purchasing Agent on the mailing lists for such publication so that the Purchasing Agent can monitor said changes. Such membership will be at no cost to the City.

4. CONTRACT AWARD NOTIFICATION

- 4.1 The Purchasing Division will issue a Contract Award Notification to all successful bidders. Such contract award notification will incorporate the City's specifications, and may incorporate the bidder's specifications.
- 4.2 No action need be taken by the contractors at time of receipt of such Contract Award Notification.
- 4.3 Orders for materials will be made as needed by the various City Departments.

5. QUARTERLY REPORT

- 5.1 The contractor shall provide to the Purchasing Agent a quarterly report, showing all purchases made under the terms and conditions of the contract.
- 5.2 Such quarterly report shall itemize the following information:
 1. Each ordering department.
 2. Items and quantities purchased by department.
 3. Total dollar amount of purchases by department.

INSURANCE REQUIREMENTS FOR ALL CITY CONTRACTS

1. GENERAL PROVISIONS

- A. **Indemnification.** The Contractor shall indemnify and save harmless the City of Lincoln, Nebraska from and against all losses, claims, damages, and expenses, including attorney's fees, arising out of or resulting from the performance of the contract that results in bodily injury, sickness, disease, death, or to injury to or destruction of tangible property, including the loss of use resulting therefrom and is caused in whole or in part by the Contractor, any subcontractor, any directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This section will not require the Contractor to indemnify or hold harmless the City of Lincoln for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City of Lincoln, Nebraska.
- B. **Approved Coverage Prior to Commencing Work/Subcontractors Included.** Contractor shall purchase and maintain in place insurance to Protect Contractor and City against all liabilities and hazards as provided in this article throughout the duration of the Contract. Contractor shall not commence work under this contract until the Contractor has obtained all insurance required under this Section and such insurance has been approved by the City Attorney for the City of Lincoln, nor shall the Contractor allow any subcontractor to commence work on any subcontract until all similar insurance required of the subcontractor has been so obtained and approved.
- C. **Occurrence Basis Coverage.** All insurance shall be provided on an **occurrence basis** and not on a claims made basis, except for hazardous materials, errors and omissions, or other coverage not reasonably available on an occurrence basis; provided that all such claims made coverage is subject to the prior written approval of the City Attorney and must be clearly indicated as such in any certificate showing coverage.
- D. **Authorized and Rated Insurers Required.** All insurance coverage are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of no less than A:VII unless specific approval has been granted by the City Attorney.
- E. **Certificates Showing Coverage.** All certificates of insurance shall be filed with the City Attorney, and may utilize an appropriate standard ACORD Certificate of Insurance form showing the specific limits of insurance coverage required by this Article; provided that restrictions, qualifications or declarations inconsistent with the requirements of this Article shall not relieve the Contractor from providing insurance as required herein. Such certificates shall show the City of Lincoln as additional insured, including by specific endorsement where necessary, as indicated in the following requirements. Such certificate shall specifically state that the related insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty days, notice of cancellation, non-renewal or any material reduction in the stated amounts or limits of insurance coverage.
- F. **Terminology.** The terms "insurance," "insurance policy," or "coverage" as used in this article are used interchangeably and shall have the same meaning as "insurance" unless the context clearly requires otherwise. References to "ISO®" forms are merely for convenience and ease of reference, and an equivalent or better form as determined acceptable by the City Attorney may be used. (Note: ISO® is a registered trademark of ISO Properties, Inc.)

2. INSURANCE REQUIREMENTS

- A. **Scope of Required Coverage.** The Contractor shall take out and maintain during the life of Contract such insurance in the forms and minimum amounts as specified in this Article and as will protect Contractor and City from the following claims arising out of or resulting from or in connection

with the Contractor's operations, undertakings or omissions directly or indirectly related to the Contract, whether by the Contractor or any Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- (1) Claims under workers' compensation, disability benefit, or other employee benefit acts;
- (2) Claims arising out of bodily injury, occupational sickness or disease, or death of an employee or any other person;
- (3) Claims customarily covered under personal injury liability coverage;
- (4) Claims other than to the work itself arising out of an injury to or destruction of tangible property, including the loss of use resulting therefrom;
- (5) Claims arising out of ownership, maintenance or use of any motor vehicle;
- (6) Railroad protective liability coverage in the event the contract involves work to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing.

- B. Worker's Compensation Insurance and Employer's Liability Insurance.** The Contractor shall provide applicable statutory Worker's Compensation Insurance with minimum limits as provided below covering all Contractor's employees, and in the case of any subcontracted work, the Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for Subcontractor's employees.

The Contractor shall provide Employer's Liability Insurance with minimum limits as provided below placed with an insurance company authorized to write such insurance in all states where the Contractor will have employees located in the performance of this contract, and the Contractor shall require each Subcontractor similarly to maintain Employer's Liability Insurance on the Subcontractor's employees.

Coverage	Listing	Min Amt	Notes
Worker's Comp.			
	State	Statutory	
	Applicable Federal	Statutory	
Employer's Liability			
	Bodily Injury by accident	\$500,000	each accident
	Bodily Injury by disease	\$500,000	each employee
	Bodily Injury	\$500,000	policy limit

C. Commercial General Liability Insurance.

- (1) The Contractor shall provide Commercial General Liability Insurance in a policy form providing no less comprehensive and no more restrictive coverage than provided under the ISO® form CG00010798 or newer with standard exclusions "a" through "o" and with minimum limits as provided below. Any other exclusions that operate to contradict or materially alter the standard exclusions shall be specifically listed on the certificate of insurance and shall be subject to the prior written approval of the City Attorney.

Coverage	Min Amt	Notes
General	\$2,000,000	Aggregate
Products and Completed Operations	\$2,000,000	Aggregate
Personal and Advertising Injury	\$1,000,000	
Each Occurrence	\$1,000,000	
Fire Damage Limit	\$ 100,000	any one fire
Medical Damage Limit	\$ 10,000	any one person

(2) The required Commercial General Liability Insurance shall also include the following:

- Coverage for all premises and operations
- Endorsement to provide the general aggregate per project endorsement
- Personal and advertising injury included
- Operations by independent contractors included
- Contractual liability coverage included
- X.C.U. Coverage including coverage for demolition of any building or structure, collapse, explosion, blasting, excavation and damage to property below the surface of ground.
- Any fellow employee exclusions shall be deleted
- Coverage shall not contain an absolute pollution exclusion, and applicable remaining coverage shall apply for pollution exposures arising from products and completed operations.
- Coverage for products and completed operations maintained for duration of work and shall be maintained for a minimum of three years after final acceptance under the Contract or the warranty period for the same whichever is longer, unless modified in any Special Provisions.
- Contractual Liability coverage shall include contractually assumed defense costs in addition to any policy limits.

(3) If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing, Railroad Contractual Liability Endorsement (ISO® form CG24170196 or newer).

(4) City may at its sole option, and in lieu of being additional insured on the Contractor's policy, by written requirement in the Special Provisions or by written change order, require Contractor to provide a separate Owner's Protective liability policy. The premium cost to obtain such insurance shall be as paid as provided in the Special Provision or change order, with any related cost savings as reasonably determined by the City being reimbursed or paid to the City.

D. Vehicle liability insurance coverage.

- The Contractor shall provide reasonable insurance coverage for all owned, non-owned, hired and leased vehicles with specific endorsements to include contractual liability coverage and delete any fellow employee exclusion.
- If specifically required in the Special Provisions, the required coverage shall also include an endorsement for auto cargo pollution (ISO® form CA 99 48).

E. Railroad Protective Liability. If work is to be performed within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing or otherwise required by the Special Provisions or applicable requirements of an affected railroad, the Contractor shall provide Railroad Protective Liability Insurance naming the affected railroad/s as insured with

minimum limits for bodily injury and property damage of \$2,000,000 per occurrence, \$6,000,000 aggregate, or such other limits as required in the Special Provisions or by the affected railroad. The original of the policy shall be furnished to the railroad and a certified copy of the same furnished to the City Attorney's office prior to any related construction or entry upon railroad premises by the Contractor or for work related to the Contract.

- F. **Umbrella or Excess Insurance.** The Contractor shall provide Umbrella or Excess insurance coverage with minimum coverage limits of \$3,000,000 each occurrence and aggregate.
- G. **City included as Insured on Contractor's Policy – Endorsements required.**
The Contractor shall provide adequate written documentation, including applicable ACORD certificates, declarations pages or other acceptable policy information demonstrating that the City is included as an additional insured along with the Contractor with respect to all of the coverages required in this "Section 2A Insurance Requirements," except for applicable Worker's Compensation coverage, to include all work performed for the City and specifically including, but not limited to, any liability caused or contributed to by the act, error, or omission of the Contractor, including any related subcontractors, third parties, agents, employees, officers or assigns of any of them. The documentation or endorsement shall specifically include the city as an additional insured for purposes of Products and Completed Operations. The inclusion of the City as additional insured shall be for coverage only on a primary basis for liability coverage, and no coverage shall contain a policy or other restriction or attempt to provide restricted coverage for the City, whether on an excess, contributory or other basis regardless of any other insurance coverage available to the City.

3. **CONTRACTOR'S INDEMNITY – CONTRACTUAL LIABILITY INSURANCE**

- A. To the same extent as specified for minimum coverage requirements in Section 2 above, the required insurance shall include contractual liability coverage to include indemnification and hold harmless agreements and provisions in the related Contract Documents, specifically including the following provision:
- (1) To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless the City, its officers, agents, employees, volunteers and consultants from and against any and all claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs arising out of or related to the Contract or the Contractor's activities, errors, or omissions related to the Contract including liabilities or penalties imposed by applicable, law, rule or regulation in connection therewith; provided that such claims, damages, losses, costs, and expenses, including but not limited to attorney's fees and costs:
 - is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use therefrom, and
 - is caused in whole or in part by any act or omission of the Contractor, any subcontractor, agent, officer, employee, or assigns of the same or by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in whole or in part by a party indemnified hereunder.
 - (2) Such indemnification shall not be construed to negate, abridge, limit or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this section.
- B. In any and all claims by any employee (whether an employee of the Contractor or subcontractor, or their respective agents or assigns by anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable as an employer) in whole or in part against the City, its officers, agents, employees, volunteers or consultants, the above indemnification shall not be limited in any way by the amount of damages, compensation, benefits or other contributions payable by or on behalf of a the employer under Worker's Compensation statutes, disability benefit acts, or any other employee benefit or payment acts as the case may be.

- C. The obligations of indemnification herein shall not include or extend to:
- (1) Any outside engineer's or architect's professional errors and omissions involving the approval or furnishing of maps, drawings, opinions, reports, surveys, change orders, designs or specifications within the scope of professional services provided to the City and related to the Contract; and
 - (2) Any claims arising out of the negligence of the City to the extent the same is the sole and proximate cause of the injury or damage so claimed.
- D. In the event of any litigation of any such claims shall be commenced against the City, Contractor shall defend the same at Contractor's sole expense upon notice thereof from the City. Contractor shall notify the insuring company that the City reserves and does not waive any statutory or governmental immunity and neither Contractor, nor Contractor's counsel whether employed by Contractor or by an insurer on behalf of the Contractor shall waive such defenses or enter into any settlement or other disposition requiring waiver of any defenses or immunity of the City without the express written consent of the City.

4. CONTRACTOR'S INSURANCE FOR OTHER LOSSES.

- A. Contractor shall assume full responsibility for all loss or damage from any cause whatsoever to any tools owned, rented or used in connection with the Contract including any tools, machinery, equipment, storage devices, containers, sheds, temporary structures, staging structures, scaffolding, fences, forms, braces, jigs, screens, brackets, vehicles and the like owned or rented by Contractor, or Contractor's agents, subcontractors, suppliers, or employees.
- B. In connection with the above, Contractor shall cause or require any applicable insurance related to physical damage of the same to provide a waiver of a right of subrogation against the City.

5. NOTIFICATION IN EVENT OF LIABILITY OR DAMAGE.

- A. The Contractor shall promptly notify the City in writing and provide a copy of all claims and information presented to any of Contractor's insurance carrier/s upon any loss or claim or upon any occurrence giving rise to any liability or potential liability related to the Contract or related work. The notice to the City shall include pertinent details of the claim or liability and an estimate of damages, names of witnesses, and other pertinent information including the amount of the claim, if any.
- B. In the event the City receives a claim or otherwise has actual knowledge of an any loss or claim arising out of the Contract or related work and not otherwise known to or made against the Contractor, the City shall promptly notify the Contractor of the same in writing, including pertinent details of the claim or liability; Provided, however the City shall have no duty to inspect the project to obtain such knowledge, and provided further that the City's obligations, if any, shall not relieve the Contractor of any liability or obligation hereunder.

6. PROPERTY INSURANCE/ BUILDER'S RISK.

- A. The Contractor shall provide property insurance (a/k/a Builder's Risk or installation Floater) on all Projects involving construction or installation of buildings or structures and other projects where provided in the Special Provisions. Such insurance shall be provided in the minimum amount of the total contract sum and in addition applicable modifications thereto for the entire work on a replacement cost basis. Such insurance shall be maintained until the City completes final acceptance of the work as provided in the Contract. Such insurance shall be written and endorsed, where applicable, to include the interests of the City, Contractor, Subcontractors, Sub-subcontractors in the related work. The maximum deductible for such insurance shall be \$5,000 for each occurrence, which deductible shall be the responsibility of the Contractor. Such insurance shall contain a "permission to occupy" endorsement.

- B. All related Property Insurance shall be provided on a "Special Perils" or similar policy form and shall at a minimum insure against perils of fire including extended coverage and physical loss or damage including without limitation or duplication of coverage: flood, earthquake, theft, vandalism, malicious mischief, collapse, and debris removal, including demolition whether occasioned by the loss or by enforcement of applicable legal or safety requirements including compensation or costs for City's related costs and expenses (as owner) including labor required as a result of such loss.
- C. All related Property Insurance shall include coverage for falsework, temporary buildings, work stored off-site or in-transit to the site, whether in whole or in part. Coverage for work off-site or in-transit shall be a minimum of 10% of the amount of the policy.
- D. The Contractor's Property Insurance shall be primary coverage for any insured loss related to or arising out of the Contract and shall not be reduced by or coordinated with separate property insurance maintained by the City.